

DEC 13 2005

IMPORTANT CONFIDENTIALITY NOTICE

The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally protected. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone (collect) to arrange for return of the telecopied document to us.

TO: - United States Patent and Trademark Office

Fax No. 571-273-8300 Phone No.

FROM: Cindy Lukas

Fax No. 513-622-3300 Phone No. 513-622-1692

Application No.: 10/725,248

Inventor(s): Sharon Ann Norton et al.

Filed: December 1, 2003

Docket No.: P145

Confirmation No.: 1932

FACSIMILE TRANSMITTAL SHEET AND
CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on December 13, 2005, to the above-identified facsimile number.

 (Signature)

Listed below are the item(s) being submitted with this Certificate of Transmission:**

1) Response to Restriction Requirement (3 pgs.)

Number of Pages Including this Page: 4

Comments:

**Note: Each paper must have its own certificate of transmission, OR this certificate must identify each submitted paper.

(FAX-USPTO.doc Revised 11/18/2005)

Appl. No. 10/725,248
Atty. Docket No. P-145
Resp. to Restriction: December 13, 2005
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER

DEC 13 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/725,248
Applicant(s) : Sharon Ann Norton, et al.
Filed : December 1, 2003
Title : Compositions Comprising Fermentable Fiber Which
Are Adapted For Use By A Companion Animal And
Kits And Methods Of Their Use
TC/A.U. : 1623
Examiner : Amy Lynn Clark
Conf. No. : 1932
Docket No. : P145
Customer No. : 27752

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Dear Sir:

This is responsive to the December 2, 2005 Office Action in the above-entitled application, setting a one-month period for response.

Remarks begin on page 2 of this paper.

Appl. No. 10/725,248
Atty. Docket No. P-145
Resp. to Restriction: December 13, 2005
Customer No. 27752

Election with Traverse under 37 CFR § 1.143

The Office Action states that the restriction to one invention is required under 35 USC §121. Applicants respectfully traverse the Restriction Requirement because there is no serious burden placed on the Examiner to consider all claims.

The Examiner has required the Applicants to restrict the claims of the above captioned application. Specifically, the Examiner alleges that the application contains claims directed to three patentable inventions. The Examiner has designated Claims 1-23 as Group I, Claims 24-36 as Group II, and Claims 37-53 as Group III.

Claims 1-23 are drawn to a composition comprising at least 0.25% of total fermentable fiber. Claims 24-36 are drawn to a kit comprising a fermentable fiber. Claims 24-30 are drawn to a method selected from the group consisting of enhancing gastrointestinal health, improving fecal odor of the feces, reducing the risk of cancer, and combinations thereof, comprising orally administering to the companion animal the composition according to Claim 1.

Additionally, the Examiner requests that an election be made under 35 U.S.C. 121 to a single disclosed species.

Under MPEP § 803, election/restriction is proper when both of the following criteria are met: (1) The inventions must be independent or distinct as claimed; and (2) There must be a serious burden on the Examiner if the restriction is not required. Applicants submit that the aforementioned methods, kits and compositions are so closely related that it would not present an undue burden on the Examiner to examine the art. Additionally, Applicants respectfully submit that any prior art search set up for a specific fermentable fiber will be coextensive with any search for any of the disclosed and claimed fermentable fibers of the present invention. Applicants respectfully submit that examination of the present application, as a single unrestricted application, would not be unduly burdensome on the Examiner because a thorough art search of all of the identified classes and subclasses could easily be performed in a single application.

For these reasons, Applicants submit that the restriction requirement applied to the above identified application is improper and should be withdrawn.

Appl. No. 10/725,248
Atty. Docket No. P-145
Resp. to Restriction: December 13, 2005
Customer No. 27752

In view of the foregoing remarks, it is respectfully requested that the Examiner withdraw the requirement for restriction and allow Claims 1-53 to be prosecuted in the same application. Should the Examiner's restriction requirement not be withdrawn, Applicants hereby provisionally elect with traverse until final disposition of the elected claims, Group I which corresponds to current claims 1-23.

Applicants hereby provisionally elect in abeyance under 37 C.F.R. § 1.142(b) until final disposition of the elected claims, beet pulp as the fermentable fiber.

Conclusion

Applicants respectfully request the Examiner to withdraw the restriction requirement and request reconsideration of this application and allowance of Claims 1-53.

Respectfully submitted,

By Cynthia L. Clay
Cynthia L. Clay
Attorney for Applicant
Registration No. 54,930
(513) 622-0291

December 13, 2005

Customer No. 27752